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**July 25, 2007**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: October 6, 2006

Case Number: TSO-0442

This Decision concerns the continued eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

**I. Background**

The individual is employed by a Department of Energy (DOE) contractor and held a security clearance as a condition of his employment. The individual informed DOE of an alcohol-related arrest. In order to resolve the security concern arising from the arrest, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI) with the individual in December 2005. The PSI did not resolve the concern and in March 2006, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist diagnosed him as suffering from alcohol dependence, without adequate evidence of rehabilitation or reformation, an illness which causes or may cause a significant defect in his judgment or reliability.

In June 2006, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (June 14, 2006). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J). DOE invoked Criterion H based on information in its possession that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j).

In this regard, the Notification Letter cites the diagnosis of the DOE consultant-psychiatrist that the individual suffers from alcohol dependence, which in the opinion of the DOE consultant-psychiatrist is an illness or mental condition that causes or may cause a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8 (h).

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. ' 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. ' 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his wife, his substance abuse counselor, a colleague and a friend as witnesses. The transcript taken at the hearing shall be hereinafter cited as ATr. Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as AEx. Documents submitted by the individual shall be cited as "Ind. Ex."

## II. Analysis

The applicable regulations state that A[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. ' 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (Aclearly consistent with the national interest standard for the granting of security clearances indicates Athat security determinations should err, if they must, on the side of denials); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. ' 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. ' 710.27(a). The specific findings that I make in support of this determination are discussed below.

### A. Findings of Fact

In January 1996, at the age of 17, the individual was arrested and charged with driving under the influence (DUI). Ex. 28 at 52-55. In July 1997, he entered the military. *Id.* at

35. In January 2000, while still in the military, he was arrested and charged with DUI for the second time. *Id.* at 12. His blood alcohol content (BAC) was .09. *Id.* at 17. He attended DUI school for 3 months, paid a fine, and was placed on three years probation. *Id.* at 21. He was also admitted to a 30 day alcohol treatment program. In March 2000, he was diagnosed as alcohol dependent and ordered by the military to attend one year of Alcoholics Anonymous (AA) and one appointment per week with a substance abuse counselor. *Id.* at 28-29. Despite being diagnosed as alcohol dependent, he did not think he had a problem with alcohol at that time. *Id.* at 27-28. He resumed consuming alcohol during the last two years of his military service until discharged in September 2001. He was hired by a DOE contractor in October 2001. Ex. 24.

In May 2002, the individual was evaluated by a DOE psychiatrist and again diagnosed as suffering from alcohol dependence, episodic. Ex. 15. Medical tests showed that the individual had elevated liver enzymes, and the DOE psychiatrist advised the individual to stop drinking immediately because elevated liver enzymes can cause cirrhosis of the liver, a potentially fatal condition. *Id.* The psychiatrist also found the pattern of enzyme elevation to be consistent with the elements of alcoholic hepatitis. The doctor stated that the individual was “upset” with the diagnosis of hepatitis and also opposed the psychiatrist’s request that he stop drinking. Ex. 15 at 2. Nonetheless, in August 2002, the individual signed a 12-month Employee Assistance Program (EAP) recovery agreement. Ex. 27 at 8-9. That agreement contained a diagnosis of alcohol dependence. The recovery agreement mandated a random breath test once a month, a random monthly urine test, and a random blood test every three weeks. In February 2003, the individual was evaluated by a second DOE psychiatrist. Ex. 13. The DOE psychiatrist concluded that the individual had been a user of alcohol habitually to excess from 1997 to 2001, but did not meet the criteria for alcohol dependence. *Id.* at 12-14. In February 2003, the individual was granted a security clearance. Ex. 5. The individual renewed the recovery agreement that year and every year thereafter.

In October 2005, the individual went to a nightclub with a friend who was visiting from out of town. Ex. 26 (2005 PSI) at 1-5. On his way home, he was arrested by the police and charged with DUI after his BAC was tested at 0.14. Despite the amount of alcohol in his blood, the individual did not consider himself intoxicated at the time. *Id.* at 14-16. The individual reported the incident to the LSO. The LSO scheduled a PSI in December 2005 in order to resolve the security concerns. At the PSI, the individual stated his intention not to drink in the future. *Id.* at 26. However, the PSI did not resolve the security concerns and the LSO requested a psychiatric evaluation of the individual.

The individual enrolled in a six-week intensive outpatient program in November 2005. The individual also began weekly group sessions with an alcohol counselor in February 2006. The individual was suspended from his job, but continued to meet his EAP counselor monthly and take random drug and alcohol screens. Individ. Ex. 2; Tr. at 32.

In March 2006, a DOE psychiatrist interviewed the individual for approximately one hour and completed a report of the interview for the record. Ex. 12 (Report). The psychiatrist concluded that the individual met four criteria for alcohol dependence in early full remission and with physiological dependence, an illness that causes or may cause a significant

defect in the individual's judgment or reliability. *Id.* at 10. He also concluded that the individual was a user of alcohol habitually to excess from 1997 to 2001. *Id.* at 9. The individual did not present adequate evidence of rehabilitation or reformation from his alcohol problems. *Id.* at 10. In order to show adequate evidence of rehabilitation from this condition, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) and work the 12 Steps with a sponsor at least once a week for a minimum of 200 hours in two years, and abstain from alcohol for two years; or (2) complete a six-month alcohol treatment program and abstain for three years. *Id.* In order to demonstrate reformation from alcohol dependence, the individual must abstain for five years, or abstain for at least two years if he attends one of the two rehabilitation programs above. *Id.*

## **B. DOE's Security Concerns**

The excessive use of alcohol raises a security concern because of its intoxicating effect. Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases.® *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE & 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE & 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as suffering from alcohol abuse and has a history of alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

## **C. Hearing Testimony**

### **1. The DOE Psychiatrist**

The DOE psychiatrist testified at the beginning of the hearing and was present during the entire proceeding. He first evaluated the individual in 2003 in response to a possible security concern about excessive alcohol consumption. Tr. at 12-14. The individual had listed two DUIs, in 1996 and 2000, in his Questionnaire for National Security Positions (QNSP). After interviewing the individual, the psychiatrist concluded at that time that the individual had been a user of alcohol habitually to excess in the past, but there was no evidence of a current problem.

He could only score two of the required three criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)* as positive, so was not able to diagnose the individual as alcohol dependent. At the end of the interview, the psychiatrist remembered telling the individual that any future alcohol problems would result in an unfavorable evaluation. *Id.* at 15.

In March 2006, the psychiatrist interviewed the individual again as a result of his October 2005 DUI. *Id.* Based on the individual's response to the psychiatrist's questions, the psychiatrist concluded that the individual was alcohol dependent according to the *DSM-IV TR*. *Id.* at 16. The psychiatrist also concluded that the individual had been in denial around the time of his 2003 evaluation. The psychiatrist found that the individual's treatment program at the time of the evaluation--completion of a six-week intensive

outpatient program, 40 AA meetings, no sponsor, no work on the 12 Step Program--was not adequate evidence of rehabilitation or reformation. *Id.* at 21. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend AA with a sponsor and do the 12 Step program once a week for 200 hours over two years and abstain from alcohol for two years. In the alternative, the individual could attend an alcohol treatment program. *Id.* at 22. The psychiatrist said that he no longer recommends one year of abstinence because too many individuals relapsed and returned to him for evaluation. He now requires two years of abstinence as adequate evidence of rehabilitation from alcohol dependence. In order to show reformation, the individual must abstain for five years. *Id.* at 22-23. The psychiatrist was adamant that two years was the minimum length of abstinence required for a favorable recommendation, but did admit that the individual is now in sustained full remission. *Id.* at 26-31.

## **2. The Individual's Alcohol Counselor**

The individual's alcohol counselor was a licensed substance abuse counselor with a master's degree in counseling and 13 years in private practice. *Id.* at 62. He had previously worked with the DOE psychiatrist in a local intensive outpatient program. The EAP counselor referred the individual to the alcohol counselor. At the time the individual had been suspended from his job, was looking for work, and according to the alcohol counselor, had lost his self-esteem. The individual was embarrassed the first four months that he began to see the counselor because he was unemployed and had embarrassed his family. *Id.* at 63. The counselor noticed something was bothering the individual and asked him to participate in an individual session. After the individual session, the counselor testified that the individual began to realize his own importance and potential. The individual got a temporary job and began to recover his self-respect. He never missed a meeting, and his wife was very supportive of his attendance at the sessions. Bonding with his daughter helped the individual to keep going, as well as having a good sponsor and the respect of his co-workers. *Id.* at 66. According to the counselor, the individual's risk of relapse is less than 10% due to his strong family support system. He argues that the individual "turned the corner" in his alcohol problem in July 2006 during a session when he came out of his state of denial. The alcohol counselor and the EAP counselor stay in touch with each other regarding the individual's treatment. He considers the individual sober and in recovery. *Id.* at 70-71. The individual has maintained his sobriety even in social situations that prior to treatment would have caused him to resume drinking. *Id.* at 73.

## **3. Other Witnesses**

As further evidence of rehabilitation and reformation, the individual presented the testimony of his wife, a colleague, and a fellow member of the alcohol counselor's group sessions. The wife has been married to the individual for one year, but they have known each other since high school. *Id.* at 100. She does not recall seeing the individual drink since 2002, and alleges that he is not bothered when others around him drink alcohol. *Id.* at 104-106. During the time that the individual was suspended, he spent a lot of time with their child, and that has helped their family. *Id.* at 103. She said that they now socialize with a different group of people, not those who may drink heavily. He has told her that he has no intention to drink and she supports that goal. *Id.* at 104.

A colleague of the individual, a union official, also testified on his behalf. He described the individual as very responsible and the type of employee he wanted to support. *Id.* at 90-92. The colleague testified that he was impressed with the individual because the individual had “humbled himself” to go through treatment and the administrative review process. *Id.* at 90. He asserted that the individual was handling the pressure of his suspension well, and behaved admirably in admitting his mistake, especially knowing that his former colleagues are aware of the matter.

An acquaintance of the individual also testified. *Tr.* at 42. The acquaintance is a recovering alcoholic and also attends group sessions with the counselor. *Id.* at 43. The acquaintance claims that he has seen the individual go through denial, but that in his opinion the individual is now very serious about his treatment. *Id.* at 44. The individual attends three to four meetings a week, has a sponsor, a counselor and a support network. He said that the individual talks about his wife and daughter often. *Id.* at 48.

#### **4. The Individual**

The individual testified that he had completed 17 months of abstinence at the time of the hearing. *Tr.* at 32. After the October 2005 DUI, he attended a six-week Intensive outpatient program at a local hospital in December 2005. He participates in weekly group therapy with the alcohol counselor for one and a half hour, has a n AA sponsor (who was not able to testify), and is working a 12-Step Program with his sponsor. His last drink was in October 2005, the night of the arrest. He has had a sponsor since February 2007. *Id.* at 35. He has attended 127 AA meetings, has a one year token, and is working on the third step of the 12 Step Program. *Id.* at 35-36. He has a recovery agreement with EAP that he extends every August, and as part of that agreement he has monthly alcohol screens and a monthly meeting with an EAP counselor.<sup>1</sup> *Id.* at 38. The individual does not intend to drink in the future and avoids people and places that may cause him to drink alcohol. *Id.* at 124.

#### **D. Evidence of Rehabilitation and Reformation**

Based on the record and the witness testimony at the hearing, I conclude that the individual is a very active and sincere participant in his alcohol recovery program. The individual has regularly attended AA meetings and alcohol counseling sessions for 17 months prior to the hearing, since his arrest in October 2005. In addition, the witnesses testified credibly that the individual has not consumed alcohol in at least 17 months. Nonetheless, the DOE psychiatrist listened to the testimony during the hearing and concluded that although the individual has been abstinent for 17 months and now has good insight into his alcohol problem, he has not had sufficient treatment nor been abstinent long enough to demonstrate adequate evidence of rehabilitation or reformation from alcohol dependence.

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<sup>1</sup> The EAP counselor, a clinical psychologist, submitted a letter recommending a favorable determination for the individual. He wrote that the individual has maintained 17 months of sobriety and has been an “excellent and committed participant” in the EAP recovery program. The psychologist has worked with the individual for one year and meets with the individual monthly, even though the individual is currently employed full-time with another company. *Ind. Ex.* 2.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE & 82,827 (2001). In this case, the DOE psychiatrist testified that the individual did not present adequate evidence of rehabilitation or reformation. The psychiatrist argues that there is an unacceptable level of risk of relapse if the individual does not complete two full years of treatment and sobriety, given the individual's pattern of alcohol-related legal problems and his broken promises that he would not drink in the future. On the other hand, the individual's alcohol counselor testified that the individual is now sober and in recovery. He credits the individual's strong family support, commitment to his recovery, and good working relationship with a sponsor for his current sobriety. The counselor was very impressed by the way that the individual "surrendered" and admitted that he was an alcoholic, but also realized that he had a bright future.

After evaluating the evidence in this case, I find that the individual has not sufficiently mitigated the security concerns of Criteria H or J at this time. 10 C.F.R. ' 710.8 (h) and (j). To his credit, there is no evidence in the record to dispute his contention that he has abstained from alcohol for 17 months at the time of the hearing. The individual now demonstrates a healthy attitude towards rehabilitating himself from alcohol dependence. He is very committed to his treatment program, his family, and his job. He attends EAP sessions faithfully even though he no longer works on site. He continues to communicate with his union representative. All mental health professionals involved in this case agree that the individual is on the right track towards rehabilitation and has a good treatment program in place. However, the length of the individual's sobriety--he has been sober and in treatment for 17 months, seven months less than the two years recommended by the DOE psychiatrist--prevents a consensus among the experts that the individual manifests adequate evidence of rehabilitation. The DOE psychiatrist was satisfied with the individual's program, but was not willing to give him a favorable recommendation until he has achieved two years of abstinence, which will occur in October 2007 if the individual continues to be abstinent. This time requirement was proposed because of the relatively high relapse rate of alcoholics who have attained one year of abstinence compared to those with two years of abstinence.

I find that the recommendation of the DOE psychiatrist is persuasive. The individual had two DUIs prior to being granted a security clearance. In 2002, during the process of applying for a clearance, he was informed that his liver enzymes were elevated and that he had alcohol hepatitis. He was upset when the first DOE psychiatrist gave him this diagnosis and advised him not to drink, but signed an EAP recovery agreement and renewed the agreement annually. In 2003, a second DOE psychiatrist warned the individual that further drinking could jeopardize his security clearance. Unfortunately, despite the EAP agreement, the warnings and some alcohol treatment he was arrested for his third DUI in October 2005. After the arrest, the individual began a more intense recovery program, and testified credibly that he has abstained from alcohol since then. He appears free of denial about the severity of his alcohol problem. However, based on a review of the individual's record, especially his history of relapse, I agree with the DOE psychiatrist that the individual will not demonstrate adequate evidence of rehabilitation until he completes two years of abstinence and treatment.

#### **IV. Conclusion**

In view of Criteria H and J and the record before me, I cannot find that restoring the individuals access authorization prior to attaining two years of abstinence would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: July 25, 2007